

INFORMATION BULLETIN #104 INCOME TAX

AUGUST 2007

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information which is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in the Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Qualified Patents Income Exemption

REFERENCES: IC 6-3-1-3.5, IC 6-3-2-21.7

INTRODUCTION

Indiana provides an exemption from income attributable to qualified patents. The exemption was created in 2007. It applies to utility or plant patents issued after Dec. 31, 2007 for an invention resulting from a "development process conducted in Indiana," for taxable years beginning after Dec. 31, 2007. It does not apply to design patents.

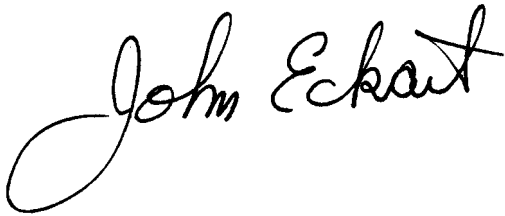
The total amount of exemption claimed by a taxpayer in a taxable year may not exceed \$5,000,000. The exemption may not be claimed for more than 10 years. For the first 5 years, 50 percent of the amount of income received from the patents is exempt, and the percentage declines by 10 percent each year starting in the sixth year that the exemption is claimed.

I. DEFINITIONS

- A.** “Invention” means an invention or discovery. *35 U.S.C. 100(a)*
- B.** “Utility patent” means a patent issued for an invention or improvement of a useful process, machine or composition of matter. *35 U.S.C. 101*
- C.** “Plant patent” means a patent issued for an invention and asexual reproduction of any distinct new variety of plant, other than a tuber propagated plant or a plant found in an uncultivated state. *35 U.S.C. 161.*
- D.** “Design patent” means a patent issued for any new, original and ornamental design for an article of manufacture. *35 U.S.C. 171.*
- E.** “Taxpayer” means an individual or corporation with less than 500 employees or a nonprofit organization, and is domiciled in Indiana.
- F.** “Income” means:
 - (a)** licensing fees or other income received for the use of a patent,
 - (b)** royalties received for the infringement of a patent,
 - (c)** receipts from the sale of a qualified patent, or
 - (d)** income from the taxpayer’s own use of a patent to produce the claimed invention, as long as:
 - 1.** the income does not exceed the fair market value of the licensing fees or other income that would be received by allowing use of the taxpayer’s patent by someone other than the taxpayer, and
 - 2.** the fair market value is determined in each taxable year in which the taxpayer claims an exemption.

II. CLAIMING THE EXEMPTION

The taxpayer is required to claim the exemption on the qualified taxpayer's state tax return, and shall submit all information that the Department deems necessary for the determination of the exemption.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner